

APPEAL NO. 022963
FILED JANUARY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 9, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed, and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the sixth quarter. The claimant contended that he had no ability to work during the qualifying period. The claimant did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

Conflicting evidence was presented on the disputed issue. The hearing officer found that the claimant was not unable to perform any type of work in any capacity during the qualifying period and that the claimant did not make a good faith search for employment commensurate with his ability to work during the qualifying period. In determining the disputed issue, the hearing officer could consider the medical reports as well as the videotape of the claimant's activities during the qualifying period. Texas Workers' Compensation Commission Appeal No. 012674, decided December 10, 2001. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that the hearing officer erred in not allowing him to call his surgeon as a witness. In order to show reversible error in connection with evidentiary

rulings, it must be shown that the ruling was in error and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. After the claimant requested that a telephone call be placed to his surgeon, the claimant indicated that it would probably be best not to call the surgeon because the surgeon had already said everything he would say in his reports that were in evidence. Based on that representation, the hearing officer determined that the surgeon's testimony would probably be cumulative of the evidence already in the record and did not make the telephone call to the surgeon. Under these circumstances, we conclude that the claimant has not shown reversible error in the hearing officer's determination not to call the surgeon.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge